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United States Government Accountability Office
Washington, DC 20548

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June 23, 2008

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Nuclear Regulatory Commission: Revision of Fee Schedules; Fee Recovery for FY 2008*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Nuclear Regulatory Commission (NRC), entitled "Revision of Fee Schedules; Fee Recovery for FY 2008" (RIN: 3150-AI28). We received the rule on June 9, 2008. It was published in the *Federal Register* as a final rule on June 6, 2008. 73 Fed. Reg. 32,386.

The final rule amends the licensing, inspection, and annual fees that NRC charges its applicants and licensees. The final rule is necessary to implement the Omnibus Budget Reconciliation Act of 1990, as amended, which requires that NRC recover approximately 90 percent of its budget authority in each fiscal year, less the amounts appropriated from the Nuclear Waste Fund and for the Waste Incidental to Reprocessing activities and generic homeland security activities. The amount to be recovered for fiscal year 2008 is approximately \$779.1 million. After accounting for carryover and billing adjustments, the net amount to be recovered is approximately \$760.7 million.

Enclosed is our assessment of the NRC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that NRC complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Rebecca L. Schmidt
Director, Office of Congressional Affairs
Nuclear Regulatory Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
NUCLEAR REGULATORY COMMISSION
ENTITLED
"REVISION OF FEE SCHEDULES; FEE RECOVERY FOR FY 2008"
(RIN: 3150-AI28)

(i) Cost-benefit analysis

NRC was not required to and did not prepare a separate cost-benefit analysis for this rule. In setting the fees, NRC is required under 42 U.S.C. § 2214 to set fees so that the costs to users bear a reasonable relationship to the cost of services provided by NRC, which is the benefit provided to users.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

NRC performed a Regulatory Flexibility Analysis as required by the Act, which is contained in Appendix A of the final rule. NRC determined that the annual fees significantly impact a substantial number of small entities. In order to reduce the impact of the fee on small entities, while still meeting the requirement to recover 90 percent of its budget, NRC has instituted a maximum fee of \$2,300 for small entities and a lower-tier small entity annual fee of \$500.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

Because NRC is an independent regulatory agency under 42 U.S.C. § 3502(5), it is not subject to the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

NRC published a proposed fee rule for FY 2008 on February 13, 2008. 73 Fed. Reg. 8,507. NRC received seven comments in response to the proposed rule. NRC responded to those comments in the final rule. 73 Fed. Reg. 32,386.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain any information collection requirements and therefore is not subject to the Paperwork Reduction Act.

Statutory authorization for the rule

NRC is required by 42 U.S.C. § 2214 to recover approximately 90 percent of its budget authority, less amounts appropriated for certain activities, through fees to NRC licensees and applicants and to establish such fees by rule.

Executive Order No. 12,866

Because NRC is an independent regulatory agency under 42 U.S.C. § 3502(5), it is not covered by Executive Order No. 12,866.

Executive Order No. 13,132 (Federalism)

Because NRC is an independent regulatory agency under 42 U.S.C. § 3502(5), it is not covered by Executive Order No. 13,132.